

**CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.**

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\*MEMBER N.Y. BAR ONLY

JAMES D. CECCHI (1933-1995)  
JOHN G. GILFILLAN III (1936-2008)

May 11 2011

***Via ECF, Federal Express and Facsimile***

Honorable Madeline Cox Arleo, U.S.M.J.  
M.L. King, Jr. Federal Building  
& U.S. Courthouse  
50 Walnut Street, Room 2060  
Newark, New Jersey 07101

**RE: *Chaaban, et al. v. Criscito*  
Civil Action No. 08-1567 (GEB/MCA)  
Our File No. 160365.1**

Dear Judge Arleo:

As Your Honor will recall, our Firm along with Witman Stadtmauer, P.A. represent the Plaintiffs in the above-referenced matter. On April 1, 2011, Judge Brown entered a Final Judgment (Compensatory Damages) awarding Plaintiffs in excess of \$4.1 million against Defendant.

On April 25, 2011, we served counsel for Defendant with Plaintiffs' First Set of Post-Judgment Interrogatories, Plaintiffs' Post-Judgment Request for Production Documents and a Notice to Take Oral Deposition of the Defendant.<sup>1</sup>

On April 27, 2011, Defendant's counsel, R. Bruce Crelin, Esq. of Kern Augustine Conroy & Schoppmann, P.C., confirmed receipt of the post-judgment discovery but indicated that the Defendant had not yet retained the Kern Augustine firm to represent him in connection with post-judgment collection efforts. Mr. Crelin also indicated that he should know by the week of May 2 if his Firm would continue to represent the Defendant. A copy of Mr. Crelin's email of April 27, 2011 is annexed hereto as Exhibit A.

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<sup>1</sup> Defendant filed a Notice of Appeal with respect to the Final Judgment (Compensatory Damages) on April 25, 2011. However, no supersedeas bond has been approved or filed, and no order staying execution has been entered.

Honorable Madeline Cox Arleo, U.S.M.J.

May 11, 2011

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Having not heard from Mr. Crelin or anyone else in his Firm during the week of May 2, I contacted Mr. Crelin by phone on Monday, May 9, to confirm that responses to the post-judgment discovery served on April 25 would be forthcoming in the time provided by the Federal Rules of Civil Procedure. I followed up that phone conversation with an email confirming Plaintiffs' position that the Kern Augustine firm was and is counsel of record in this matter for Defendant as a result of, among other things: the District Court proceedings being ongoing (Plaintiffs' application for attorneys' fees is pending before Judge Brown); the Kern Augustine firm has not made a motion to be relieved as counsel in accordance with the provisions of Local Civil Rule 102.1; and the Kern Augustine firm had filed an appeal from the Final Judgment (Compensatory Damages) on behalf of the Defendant. A copy of my May 9, 2011 email is attached as Exhibit B.

In my May 9 email, I also indicated to Mr. Crelin that in the event the Defendant was intending to post a supersedeas bond in order to stay execution proceedings, Mr. Crelin should let me know so that we could attempt to agree upon the form of the supersedeas bond, the amount of the bond and the form of an Order Approving Supersedeas Bond and Staying Execution.

In response to my May 9 email, I received an email from Robert Conroy, Esq. setting forth the Kern Augustine firm's position as follows:

Your position is contrary to law. The lower court matter is over and our retention concluded with the entry of judgment. Post judgment matters are separate and apart. We have NOT been retained in that regard so please be guided accordingly. We have been retained to prosecute an appeal and that we will do will [sic] great vigor. Thank you.

A copy of Mr. Conroy's email of May 9 is attached as Exhibit C.

I received another email from Mr. Conroy on May 10, 2011. In that email he indicated that Defendant may be hiring "an experienced debtor's counsel" to represent him on post-judgment issues. A copy of Mr. Conroy's May 10 email is attached as Exhibit D.

In view of the fact that the Defendant has not posted a supersedeas bond and no order has been entered staying execution, Plaintiffs are entitled to serve post-judgment discovery on Defendant's counsel of record (the Kern Augustine firm) and are entitled to timely responses to the discovery requests. No substitution of attorney has been filed nor has an Order been entered permitting the Kern Augustine firm to withdraw its appearance on behalf of the Defendant. It appears that the Defendant believes that he can avoid post-judgment discovery and any

Honorable Madeline Cox Arleo, U.S.M.J.

May 11, 2011

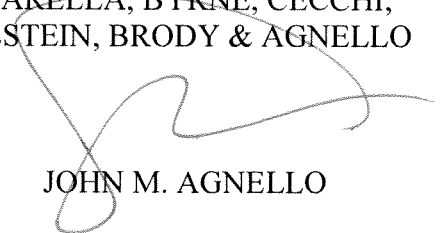
Page 3

associated execution on his assets by suggesting he is in the process of changing counsel.<sup>2</sup> This conduct is contrary to our Local Rules and should not be permitted.

We respectfully request that the Court schedule either an in-person conference or a conference call to address the foregoing issues. We are available at the Court's convenience for either form of conference.

Respectfully yours,

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO



JOHN M. AGNELLO

JMA:jas

cc: R. Bruce Crelin, Esq. (w/ Exhibits, via email)

Robert J. Conroy, Esq. (w/ Exhibits, via ECF and email)

---

<sup>2</sup> As a result of the position taken by the Kern Augustine firm, we prepared and provided to our process server a subpoena for Defendant's post-judgment deposition. We were advised by our process server earlier today that after numerous attempts, a subpoena requiring Defendant to appear for a post-judgment deposition was served earlier today at Defendant's home by delivery of the subpoena to Defendant's wife.

# **Exhibit A**

**Laura Tempesta**

---

**From:** Bruce Crelin [BCrelin@drlaw.com]  
**Sent:** Wednesday, April 27, 2011 12:03 PM  
**To:** John Agnello; Stephen M. Charme  
**Cc:** Robert Conroy  
**Subject:** Chaaban v. Criscito

Counsel:

We are in receipt of the post-judgment discovery items which you have sent.

Please be advised that, although Dr. Criscito has retained us to pursue an appeal on his behalf, he has not as yet retained us to represent him in connection with any post-judgment collection efforts.

We should know by the middle of next week whether or not Dr. Criscito will retain us in that capacity, and we will let you know as soon as we have a definitive answer.

R. Bruce Crelin  
Kern Augustine Conroy & Schoppmann, P.C.  
1120 Route 22 East  
Bridgewater, NJ 08807  
Tel. - (908) 704-8585  
Fax - (908) 704-8899  
bcrelin@drlaw.com

Admitted to practice law in New Jersey

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5/11/2011

# **Exhibit B**

**Laura Tempesta**

**From:** Laura Tempesta on behalf of John Agnello  
**Sent:** Monday, May 09, 2011 3:31 PM  
**To:** 'Bruce Crelin'  
**Cc:** Robert Conroy; 'Stephen M. Charme'; Melissa Flax  
**Subject:** RE: Chaaban v. Criscito

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	'Bruce Crelin'	
	Robert Conroy	
	'Stephen M. Charme'	
	Melissa Flax	Delivered: 5/9/2011 3:31 PM

Bruce,

As discussed in the telephone call between yourself, Melissa Flax and me earlier today, Plaintiffs' position is that your firm continues to represent Dr. Criscito in the District Court proceedings with respect to the post-judgment discovery which we served as a result of the entry of the Final Judgment (Compensatory Damages). Our position is based upon a number of things including the following:

1. The District Court proceedings are ongoing;
2. Your firm has not made a motion to be relieved as counsel; and
3. You are representing Dr. Criscito in connection with his appeal of the Final Judgment (Compensatory Damages) entered by the District Court.

As a result, we will expect to receive responses to the discovery that we have served in accordance with the time periods set forth in the Federal Rules of Civil Procedure.

If it is your client's intention to post a Supersedeas Bond in order to stay execution, please let me know and perhaps we can agree upon the form of bond, the amount of the bond and the form of an Order Approving Supersedeas Bond and Staying Execution.

John

John M. Agnello, Esq.  
 Carella, Byrne, Cecchi, Olstein,  
 Brody & Agnello, P.C.  
 5 Becker Farm Road  
 Roseland, New Jersey 07068  
 (973) 994-1700  
 (973) 994-1744 - fax  
[jagnello@carellabyrne.com](mailto:jagnello@carellabyrne.com)

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**From:** Bruce Crelin [<mailto:BCrelin@drlaw.com>]  
**Sent:** Wednesday, April 27, 2011 12:03 PM  
**To:** John Agnello; Stephen M. Charme

5/11/2011

**Cc:** Robert Conroy  
**Subject:** Chaaban v. Criscito

Counsel:

We are in receipt of the post-judgment discovery items which you have sent.

Please be advised that, although Dr. Criscito has retained us to pursue an appeal on his behalf, he has not as yet retained us to represent him in connection with any post-judgment collection efforts.

We should know by the middle of next week whether or not Dr. Criscito will retain us in that capacity, and we will let you know as soon as we have a definitive answer.

R. Bruce Crelin  
Kern Augustine Conroy & Schoppmann, P.C.  
1120 Route 22 East  
Bridgewater, NJ 08807  
Tel. - (908) 704-8585  
Fax - (908) 704-8899  
[bcrelin@drlaw.com](mailto:bcrelin@drlaw.com)

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5/11/2011

# **Exhibit C**

## **Laura Tempesta**

---

**From:** Robert Conroy [RConroy@drlaw.com]  
**Sent:** Monday, May 09, 2011 4:35 PM  
**To:** John Agnello; Bruce Crelin  
**Cc:** 'scharme@wsmesq.com'; Melissa Flax  
**Subject:** Re: Chaaban v. Criscito

Your position is contrary to law. The lower court matter is over and our retention concluded with the entry of judgment. Post judgment matters are separate and apart. We have NOT been retained in that regard so please be guided accordingly. We have been retained to prosecute an appeal and that we will do with great vigor. Thank you.

Robert J. (Bob) Conroy  
Kern Augustine Conroy & Schoppmann, P.C.  
1-908-704-8585

----- Original Message -----

From: Laura Tempesta <LTempesta@carellabyrne.com>  
To: Bruce Crelin  
Cc: Robert Conroy; Stephen M. Charme <scharme@wsmesq.com>; Melissa Flax <MFlax@carellabyrne.com>  
Sent: Mon May 09 15:31:22 2011  
Subject: RE: Chaaban v. Criscito

Bruce,

As discussed in the telephone call between yourself, Melissa Flax and me earlier today, Plaintiffs' position is that your firm continues to represent Dr. Criscito in the District Court proceedings with respect to the post-judgment discovery which we served as a result of the entry of the Final Judgment (Compensatory Damages). Our position is based upon a number of things including the following:

1. The District Court proceedings are ongoing;
2. Your firm has not made a motion to be relieved as counsel; and
3. You are representing Dr. Criscito in connection with his appeal of the Final Judgment (Compensatory Damages) entered by the District Court.

As a result, we will expect to receive responses to the discovery that we have served in accordance with the time periods set forth in the Federal Rules of Civil Procedure.

If it is your client's intention to post a Supersedeas Bond in order to stay execution, please let me know and perhaps we can agree upon the form of bond, the amount of the bond and the form of an Order Approving Supersedeas Bond and Staying Execution.

John

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jagnello@carellabyrne.com <blocked::mailto:jagnello@carellabyrne.com>

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---

From: Bruce Crelin [mailto:BCrelin@drlaw.com]  
Sent: Wednesday, April 27, 2011 12:03 PM  
To: John Agnello; Stephen M. Charme  
Cc: Robert Conroy  
Subject: Chaaban v. Criscito

Counsel:

We are in receipt of the post-judgment discovery items which you have sent.

Please be advised that, although Dr. Criscito has retained us to pursue an appeal on his behalf, he has not as yet retained us to represent him in connection with any post-judgment collection efforts.

We should know by the middle of next week whether or not Dr. Criscito will retain us in that capacity, and we will let you know as soon as we have a definitive answer.

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addressed; and (iii) if you are not the original addressee of this communication, you should seek advice based on your particular circumstances from an independent advisor.

# **Exhibit D**

**Laura Tempesta**

---

**From:** Robert Conroy [RConroy@drlaw.com]  
**Sent:** Tuesday, May 10, 2011 12:13 PM  
**To:** John Agnello  
**Cc:** 'Stephen M. Charme'; Melissa Flax; Bruce Crelin  
**Subject:** RE: Chaaban v. Criscito

Counsel:

I want to confirm that Dr. Criscito is in the process of retaining other counsel to represent him on post-judgment issues apart from the pending circuit court appeal. We do not, and will not, be representing him in any such post-judgment matters. We believe that he may be hiring an experienced debtor's counsel to do so.

Might we suggest that you discuss with your clients a more realistic demand. Surely, you must have shared with them that the appeal will most likely involve at the very least a remand on damages and could leave them ultimately with less than \$1,000,000 net.

**Robert J. (Bob) Conroy**

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---

**From:** Laura Tempesta [mailto:LTempesta@carellabyrne.com] **On Behalf Of** John Agnello  
**Sent:** Monday, May 09, 2011 3:31 PM  
**To:** Bruce Crelin  
**Cc:** Robert Conroy; Stephen M. Charme; Melissa Flax  
**Subject:** RE: Chaaban v. Criscito

Bruce,

5/11/2011

As discussed in the telephone call between yourself, Melissa Flax and me earlier today, Plaintiffs' position is that your firm continues to represent Dr. Criscito in the District Court proceedings with respect to the post-judgment discovery which we served as a result of the entry of the Final Judgment (Compensatory Damages). Our position is based upon a number of things including the following:

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As a result, we will expect to receive responses to the discovery that we have served in accordance with the time periods set forth in the Federal Rules of Civil Procedure.

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John

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**To:** John Agnello; Stephen M. Charme  
**Cc:** Robert Conroy  
**Subject:** Chaaban v. Criscito

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